

CANADA'S INTERNAL SECURITY

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MAY 8 and 9, 1945, were officially proclaimed V-E Days in England. On the latter day in the House of Commons of the United Kingdom, Mr. Herbert Morrison, as Home Secretary, announced certain revocations of the Defence Regulations which had been in effect since the outbreak of war in 1939.¹ He stated that in accordance with the government's declared policy of relaxing war-time restrictions as soon as changes in the war position made this possible or desirable, advance consideration had been given to the question of what Defence Regulations could be dispensed with on the termination of hostilities in Europe, with the result that as of May 9, by order-in-council, eighty-four of the Defence (General) Regulations were revoked entirely and another twenty-five in part.² He added that he was happy to announce the sweeping away of these limitations, the relinquishment of the exceptional powers entrusted to the Home Secretary, and the return to traditional British freedoms.

In Canada, on June 14, 1945, an order-in-council³ was passed establishing an inter-departmental committee⁴ to examine the Defence of Canada Regulations "with a view to the revision thereof, including the variation, modification and revocation of the same." The inter-departmental committee so established was to report to the President of the Privy Council and make such recommendations regarding war-time regulations as it considered appropriate, and consistent with the vigorous prosecution of the war against Japan.

The precipitous surrender of Japan hastened the relaxation of the provisions for Canada's internal security. Twelve of the Defence of Canada Regulations, among which were most of the regulations directly affecting civil liberties, were revoked by order-in-council of August 16, 1945. A month later, on September 14, forty-four of the remaining Defence Regulations were revoked and four others revoked in part or amended. The net result of these two orders-in-council was to remove most of the restrictions on liberties normally enjoyed by individuals in peace-time, but continuing in effect upwards of forty Defence Regulations, including some of those relating to enemy aliens, to protection of property, and to custody of Japanese persons, and those Regulations containing administrative and procedural provisions. It is therefore timely to present a survey of the nature and extent of Canada's Defence Regulations, and to assay their value in preventing sabotage and controlling subversive activity.

The Defence of Canada Regulations. Section 3 of the War Measures Act⁵

¹The British Defence (General) Regulations and special codes of regulations were promulgated by order-in-council under authority of the Emergency Powers (Defence) Act of 1939, with annual renewals.

²See report in "Question Time in the House of Commons," (*British Speeches of the Day*, vol. III, No. 6, June, 1945), pp. 422-3.

³P.C. 4136. *II Canadian War Orders and Regulations*, 1945, no. 12, June 25, 1945, p. 587.

⁴To be composed of representatives of: the Department of Justice, the Privy Council Office, the Department of External Affairs, the Department of the Secretary of State, the Department of National War Services, and the Royal Canadian Mounted Police.

⁵Revised Statutes of Canada, 1927, c. 206 (originally enacted in 1914).

authorizes the Governor-General-in-Council to make "such orders and regulations, as he may by reason of the existence of real or apprehended war, invasion or insurrection deem necessary or advisable for the security, defence, peace, order and welfare of Canada." In pursuance of this authority the government promulgated the Defence of Canada Regulations by order-in-council of September 3, 1939.⁶ The sixty-four Regulations so enacted had been drafted by an inter-departmental committee on emergency legislation established in 1938,⁷ the report of which was made in July, 1939.⁸ Upon the recommendation of this committee, the cabinet immediately approved the draft regulations submitted therewith.⁹ At the outbreak of war between the United Kingdom and Germany the government of Canada immediately proclaimed the Defence of Canada Regulations to be in effect.

Three features in the actual drafting of the Regulations are worthy of note. Starting at the time of the Munich crisis, the committee based its work on the "Defence of Canada Order, 1917," but the temporary respite following Munich allowed the committee to compile a completely revised set of regulations. The work of drafting was performed by a very small number of the committee, with volunteer secretarial help, with no special staff or equipment, and with all work being performed outside the regular office hours by officials and employees holding other full time positions. Thirdly, in preparing the Regulations the committee acted constantly in consultation with other governments. Here was an indication of the recognition of the interdependence of nations even in matters of internal security.

Because of the extensiveness of the Regulations, and because of the complexity of Canada's federal system, it is impracticable to attempt to present in brief form any analysis of the administration of the Regulations. The following paragraphs are devoted to the major areas of regulation, with a presentation of the significant actions taken therein, and with only incidental allusions to the matter of administration.

Amendments and Revisions. By means of order-in-council, new regulations have been added or inserted, some have been rescinded in whole or in part from time to time, and three annual consolidations (1940, 1941, 1942) have been established. No provision is made in the War Measures Act for parliamentary

⁶P.C. 2483. *Proclamations and Orders-in-Council Passed Under the Authority of the War Measures Act*, vol I, p. 27. The existence of "apprehended war" was proclaimed September 1, 1939. P.C. 2477, *ibid.*, p. 19. The existence of a state of war was proclaimed September 10, 1939. P.C. 2626, *ibid.*, p. 52.

⁷Minute of Council, P.C. 531, March 14, 1938 (marked "confidential"). This committee consisted of fifteen members, with Mr. C.P. Plaxton, now a member of the High Court of Justice of Ontario, as chairman; and Mr. J. F. McNeill, now Law Clerk and Parliamentary Counsel for the Senate and Acting Director of the Statutory Orders and Regulations Division of the Privy Council Office, as secretary.

⁸This "First Report" is printed in *The Defence of Canada Regulations* (Ottawa, 1939), pp. 2-7.

⁹Statement of the Prime Minister, 1940 *House of Commons Debates*, vol. 1, p. 659.

review of orders and regulations,¹⁰ but it has been the practice of the government to lay the Defence Regulations and amendments before a Select Committee of the House of Commons for annual review and consideration. Such Committees were constituted in the years 1940, 1941, and 1942. They met *in camera*, received representations and submissions, and after sincere and diligent consideration reported their recommendations to the House.¹¹ Only for the year 1941 was the report of the Select Committee formally debated, and adopted, by the House; most of the recommendations of the Committees were, however, implemented by the government upon the advice of the Minister of Justice. The Select Committee of 1942 recommended the removal of several organizations, including the Communist party of Canada, from the ban of illegality, but the Minister of Justice was reluctant to accept this change¹² and the House has undertaken no further attempts to advise the government.¹³

The incidence of war-time restrictions upon civil liberties has caused various public groups to interest themselves in the modification of the Regulations. Civil liberties associations in Montreal, Toronto, Winnipeg, and Vancouver came to the aid of persecuted groups and individuals; but with the exception of the Toronto association, these organizations were short-lived, having considerable difficulty in securing public support, little success in convincing the government of the necessity of modifications, and in at least one instance being choked from within by Communists. The Civil Liberties Association of Toronto remained active for nearly four years,¹⁴ but even it lost its driving force when the government remained obdurate on the matter of legalizing the banned organizations. The Communists formed the National Council for Democratic Rights, which worked incessantly for a revocation of the limitations upon Communist membership and activities. Within the bar of Canada two individuals became notable as champions of civil liberties—the late R. L. Calder, K.C., of Montreal, and J. L. Cohen, K.C., of Toronto. The efforts of the latter are especially prominent in cases testing the legality of the rather severe policy of the government in the application of the Defence Regulations.

The Protection of Essential Services and Areas. Controls as to access to certain areas, and as to sabotage, interference and misrepresentation in the per-

¹⁰In the United Kingdom, the Emergency Powers (Defence) Acts require that all regulations made thereunder be laid before the Parliament, with possible annulment resulting from action by either House within twenty-eight days.

¹¹For the reports of the annual Select Committees, see *Journals of the House of Commons*, vol. LXXX, pp. 310-16, August 1, 1940; vol. LXXXI, pp. 442-6, June 4, 1941; and vol. LXXXII, pp. 595-6, July 23, 1942.

¹²For the explanation given by Justice Minister St. Laurent, see 1942 *Debates*, vol. V, pp. 5056-7.

¹³Noteworthy for their insistent demands upon the government for explanations of the Regulations and their application were four C.C.F. members (Mr. Coldwell, Mr. Douglas, Mr. MacInnis, and Mr. Noseworthy), two Conservative members (Mr. Bence and Mr. Diefenbaker), and the one woman member of the House (then serving under the Unity label), Mrs. Dorise Nielsen.

¹⁴Outstanding among the names of prominent citizens of Toronto who devoted their talents and efforts to this Association is that of Mr. B. K. Sandwell, editor of *Saturday Night*.

formance of essential services form the contents of at least eleven regulations. Such controls are of course essential to the maintenance of public utilities and the protection of the armed forces and defence materials and activities. The government has proclaimed the premises of public utilities, numerous armaments and munitions production premises, certain strategic areas, and military areas to be within the definitions of "protected" or "controlled" areas. These places have been well guarded and no major incidents of sabotage have occurred. One young man in Halifax was charged with including in his correspondence with a friend in Denmark a suspiciously detailed description of the port at Halifax; the wife of an interned person was convicted for having in her possession a sketch of the internment camp, which might have been used by her husband as a means of escape; and Regulation 6, concerning "trespassing and loitering," was used to break up an otherwise legal picket line at the Chrysler plant in Windsor. In the latter instance, however, the government hastened to amend the Regulation.

Control of Communications and Safeguarding Information. One section of the Regulations is devoted to matters of signalling, radio, telegraph and postal communication, and censorship; another section deals with communications with enemy agents, photography, pigeons, inventions and designs, and insurance inspectors and reports. Large numbers of orders based on these regulations have been issued by the government, and matters of "information useful to the enemy" appear to have been effectively safeguarded. Various aspects of censorship will be described in paragraphs below.

The Control of Ships, Aircraft, and Essential Supplies. Regulations under these headings provide for general control of shipping, of aviation and the accompanying issue of licences, the requisitioning of property, the handling and conveyance of ammunition, and related matters. These have become largely routine and accepted activities of every war-time government, and the application of such regulations and orders calls for no comment at this time.

The Maintenance of Public Safety and Order. In pursuance of the regulations under this section of the Defence of Canada Regulations, orders have been made or instructions issued directing persons to evacuate certain areas; prescribing rules as to permission to enter such areas; detailing procedures in the event of air-raids or gas attacks; instituting and enforcing blackouts; calling for the seizure of firearms, et cetera, from certain aliens; providing for the registration of firearms; licensing the manufacture and transport of certain articles; prohibiting the possession of matches and of smoking in explosives factories and other places; prohibiting the reproduction of uniforms, et cetera, without permission; and providing for the application of the regulations relating to causing disaffection or prejudicing recruiting and of the regulations pertaining to illegal organizations. A number of these matters will be discussed in the following paragraphs.

Control of Enemy Aliens. Numerous orders-in-council have been passed relative to enemy aliens, only a few of which were made in pursuance of the

Defence of Canada Regulations.¹⁵ Regulations 24 to 26C provide for registration, arrest, internment, and other controls over enemy aliens. The Commissioner of the Royal Canadian Mounted Police was appointed Registrar General of Enemy Aliens, and under his supervision some 100,000 persons¹⁶ registered with the R.C.M.P., provincial police, postmasters, or duly appointed local officials at the 625 local registry offices throughout the Dominion. Upon the outbreak of war all known Nazi agents were immediately arrested by the R.C.M.P. and placed in internment camps. Following registration, more than 20,000 enemy aliens were exempted from the provisions of the Regulations due to their unquestioned loyalty and were issued exemption certificates. All others were required to report monthly to one of the 3,000 reporting offices for endorsement of their parole certificates. Throughout the Dominion, 2,866 postmasters and a number of provincial and local officials co-operated with the R.C.M.P. in rendering monthly reports; and except in very few instances, registration and reporting has been complied with as required by the Regulations, so that very few prosecutions have been entered.

The Subversive Press. Regulation 15 provides that the Secretary of State (or after May 13, 1942, the Minister of National War Services) may make provision by order for preventing or restricting the publication in Canada of matters as to which he is satisfied that the publication thereof would or might be prejudicial to the safety of the state or the efficient prosecution of the war. In pursuance of this authority, twelve newspapers or periodicals were banned, and one suspended briefly. Such banning or suspension was ordered by the Minister upon representations by the press censors or the R.C.M.P., and after reference to the Department of Justice.¹⁷ All of the publications banned were of secondary importance, the largest being the Communist weekly, the *Clarion*, with a circulation of about 12,000. Most were foreign-language papers,¹⁸ ten were Communist publications,¹⁹ and all were undoubtedly subversive of the British war effort. No Canadian publication has been banned since October,

¹⁵Persons of the Japanese race, both aliens and Canadian citizens, were placed under the jurisdiction of the British Columbia Security Commission of three members, created in March, 1942. P.C. 1665, March 4, 1942. *Proclamations and Orders*, vol. VI. p. 167. Under the direction of the Commission the evacuation and relocation of some 23,000 persons of Japanese descent residing on the West Coast was affected. For discussions of the Japanese problem in Canada, see H. F. Angus, "The Effect of the War on Oriental Minorities in Canada" (*Canadian Journal of Economics and Political Science*, November, 1941), pp. 506-16; and Forrest E. LaViolette, "Japanese Evacuation in Canada" (*Far Eastern Survey*, vol. XI, July 27, 1942) pp. 163-7.

¹⁶For annual statistics, and other information on this subject, see *Report of the Royal Canadian Mounted Police* for the years 1940, 1941, and 1942 (Ottawa, 1940-2).

¹⁷The legality of an order of the Minister was upheld in 1940 when the editor of *Kanadsky Gudok* moved to have the ban quashed. *Yasny v. Lapointe*, 48 Man. R. 56, [1940] 2 W.W.R. 372, [1940] 3 D.L.R. 204, 74 C.C.C. 29.

¹⁸The first nine papers banned were in as many different languages.

¹⁹All were banned before the German attack on Soviet Russia, after which time the Canadian Communists became enthusiastic supporters of the Canadian war effort. At least half of all the banned papers have reappeared under new names. See Watson Kirkconnell, *Seven Pillars of Wisdom* (Toronto, 1944), pp. 64-8.

1941. The one paper suspended was the *Canadian Tribune*, of Toronto, the principal Communist organ in Canada and successor to the banned *Clarion*. The order proclaiming a suspension of three weeks was made, after one oral and one written warning, because the *Tribune* had studiously refrained from supporting the Canadian war effort, and was publishing references to speeches and utterances of a Communist member of the United Kingdom House of Commons.²⁰

Newspaper censorship in Canada has operated largely on a voluntary basis very much as in the United States.²¹ Directives issued by the censorship officials are based on the Defence of Canada Regulations, and any editor may print what he wishes, at his own risk of prosecution under Regulation 39A. This Regulation makes it an offence to print, publish, or circulate any document or material intended or likely to cause disaffection to His Majesty, or to prejudice recruiting, or to be prejudicial to the safety of the state or the efficient prosecution of the war. In the enforcement of this Regulation, three prominent Canadian newspapers have been summoned to court: charges against the Ottawa *Citizen* for an editorial which, indiscreetly perhaps, coupled voting by returned soldiers with shooting a Bren gun, were dismissed by the magistrate on the grounds that the editorial constituted criticism in "good faith"; *Le Droit* of Ottawa was convicted of circulating statements prejudicial to the safety of the state and the efficient prosecution of the war by its comments questioning the motives of the British bombing of industries in the Paris suburbs, and was fined \$200; the Vancouver *Sun* paid a fine of \$300 for publishing critical comments relative to the inadequacy of the West Coast defences.²²

Subversive Literature. Under Regulation 39A the printing and circulating of handbills and other documents containing subversive material is made an offence. Approximately three hundred persons have been prosecuted²³ under this regulation—of whom about four-fifths were Communists and the remainder Nazi sympathizers, or Jehovah's Witnesses. Importation, possession, or circulation of their religious literature by the latter was proscribed on the same basis as was Communist literature—both were allegedly "prejudicial to recruiting" and intended or likely to cause disaffection to His Majesty or to be detrimental to the efficient prosecution of the war. The Communists were particularly active in Toronto, Montreal, Winnipeg, and Vancouver, where they distributed "peace" pamphlets from door to door. About two-thirds of the charges under this regulation resulted in convictions, and sentences ranged from a fine of a few dollars to imprisonment for three years.

²⁰This is the explanation presented by Secretary of State Casgrain, 1941 *Debates*, vol. II, p. 1071, February 27, 1941.

²¹See Wilfrid Eggleston, "Press Censorship" (*Canadian Journal of Economics and Political Science*, vol. VII, August, 1941), pp. 313-23.

²²See the following files in the office of the press censors, Ottawa: for the *Citizen*, 3-A; C-12; for *Le Droit*, 2-A; D-7; and for the *Sun*, 2-A; 5-2.

²³Prosecutions for offences under the Regulations are in the hands of the provinces, and no province has as yet compiled statistics showing the actual number of prosecutions in its courts. Figures used here are estimates made from public statements of former Attorney-General Conant of Ontario and from an analysis made by the present writer of cases reported in the press throughout the war period.

Three cases under Regulation 39A were especially prominent. A jury found Douglas Stewart, Business Manager of the banned *Clarion*, responsible for the circulation of a paper carrying subversive statements—the statement being a recently-issued manifesto of the Communist International. Stewart served six months in prison.²⁴ Charges against three young men in Ottawa of printing and possessing Communist literature resulted in the conviction and sentencing of Harry Binder, a former representative of the *Clarion* in the Parliamentary press gallery. The other two men were interned immediately upon dismissal of the charges against them. Harry Binder served two years and four months in the penitentiary. A third case concerned Dr. Samuel Levine, a Fellow of the University of Toronto and a skilled scientist. Dr. Levine was arrested when police discovered that two well-known Communist leaders of Toronto were rooming at his house. Communist literature alleged to have been found in Dr. Levine's room was introduced in evidence and the court refused to believe the defendant's claim that he was not associated with the roomers. After serving a sentence of six months, Dr. Levine was interned, and upon release was not rehired by the University.

Subversive Statements. For the protection of public safety and order, Regulation 39 makes it an offence for any person to act in any manner, spread reports, or make statements or utterances intended or likely to cause disaffection to His Majesty, or to prejudice recruiting, or to be prejudicial to the safety of the state or the efficient prosecution of the war. There have been not less than two hundred prosecutions for oral remarks alleged to violate this Regulation, the heaviest period of enforcement falling in the latter half of 1940. Most prosecutions were for allegedly disloyal remarks or for statements opposing recruiting. Among those prosecuted were two or three pacifists, about twenty-five pro-Nazis, more than thirty "beer-parlor offenders," who made unpatriotic remarks while more or less intoxicated, four or five rumour-mongers, and over one hundred persons whose personal and friendly conversation contained remarks considered to be subversive. Persons who opposed recruiting, or advocated immediate peace, or declaimed against British imperialism, or ridiculed men in uniform, or uttered insulting remarks about His Majesty, or praised Hitler, or exulted in German victories and British defeats found themselves very shortly faced with charges laid by the R.C.M.P. or provincial police. A rural school-teacher who discussed with his pupils certain criticisms of the Versailles Treaty, the fact of Germany's desire for colonies, the existence of British propaganda in the war news, and other similar items, was convicted by an Alberta police magistrate for making statements prejudicial to the safety of the state.²⁵ Theodore Dreiser, the celebrated American novelist, was quoted by the press, upon his arrival in Toronto preparatory to making a public address, as saying:

²⁴*Rex v. Stewart*, [1940] O.W.N. 95, [1940] O.R. 178, [1940] D.L.R. 689, 73 C.C.C. 141.

²⁵*Rex v. Coffin*, [1940] 2 W.W.R. 592. The opinion presented in this case represents an extreme in judicial interpretations of the Regulations. The magistrate said: "The whole intention [of the Regulations] is to compel individuals to maintain silence or speak in the unconquerable spirit by which troops in action must be moved if they are to win."

"I would rather see Germans in England than the damn snobs we have there now." He was immediately ordered by the Minister of Justice to make no further public statements in Canada, and he returned to the United States the next day without delivering his scheduled address.

Penalties upon conviction under Regulation 39 have ranged from a few days in jail to fines of \$2,000 and imprisonment up to three years.²⁶ Over half of the sentences involved jail terms only, with the most prominent sentence being a term of six months. Total fines assessed under Regulations 39, 39A, and 39C are estimated to have benefited provincial treasuries by more than \$20,000.

Lawful and Unlawful Criticism. The determination of the lawfulness of any statement, oral or written, has been dependent upon two factors: the decision of the authorities to prosecute, and the judgment of the court on the information laid. There have been numerous instances where the government, either federal or provincial, has refused to lay charges though publicly urged to do so; and there have been instances where prosecution has had no obvious basis. In one-third of the prosecutions under Regulations 39, 39A, and 39C the courts have failed to agree with the Crown prosecutors. These factors are of special significance in the matters of determining what measures of criticism of the government or of the conduct of the war should be allowed. Persons who have intentionally and publicly criticized the one or the other have found themselves subject to prosecution.

A few of the more prominent instances will serve to show the uncertainty which has existed on this point. Charles H. Millard, a nationally-known union organizer of Toronto, was prosecuted for certain allusions to "Hitlerism in Canada." Before the trial was well under way however, the Attorney-General of Ontario decided to drop the charges. The leader of certain relief recipients on strike in the City of Regina was convicted and fined \$10.00 on the charge of making statements likely to cause disaffection to His Majesty when he vigorously criticized the city officials. A professional engineer of Quebec wrote and published a pamphlet in which he charged that the British North America Act was a fraud and that the present federal government was without authority. The court, in convicting, held that while Regulation 39B permits criticism of the government of Canada, nowhere does it say that the *constitution* may be criticized and attacked. René Chaloult, a member of the Quebec Legislative Assembly, was alleged to have said, while addressing an anti-conscription rally in Montreal: "I hope that after the war Canada will sever its imperial ties and join a Pan-American Union." He was acquitted of violating the Regulations, the judge condemning the speech but holding it to be within the bounds of "criticism in good faith." The immediate effect of this decision by a Quebec court was the announcement by the Attorney-General of Ontario that on August 19, 1942, provincial enforcement of the Regulations would cease in that Province. He

²⁶The penalties provided by the Regulations are, upon summary conviction, a fine not exceeding \$500 or imprisonment not exceeding twelve months, or both, and upon indictment (at the election of the Attorney-General of Canada or of the province) a fine not exceeding \$5,000 or imprisonment not exceeding five years, or both. Most cases have been prosecuted by way of summary conviction.

pointed out the great difference in interpretation and administration as between the two Provinces, illustrated by the Stewart case in Ontario and the Chaloult case in Quebec, and said that further enforcement in Ontario would be the responsibility of federal authorities.

On June 24, 1942, Colonel George Drew, then leader of the Opposition in the Ontario Legislature, was charged by the R.C.M.P. with making a statement likely to prejudice recruiting, arising from a press release in which Colonel Drew was highly critical of the report of the Royal Commission inquiry into the Hong Kong expedition. Immediately upon the opening of the hearing, and before the defendant could make public his defence, the government, while re-asserting its belief that Colonel Drew's statements violated the Regulations, withdrew the charges. Federal officials were not so lenient, however, respecting criticism of the gasoline rationing system. A full-page advertisement of the Joy Oil Company published in the Toronto papers and addressed to the Prime Minister, criticized the gasoline rationing policy, and suggested the adoption of an alternative plan. Prosecution on direction of the Attorney-General of Canada followed, but the court acquitted the defendants, setting forth a very acceptable analysis of the standards of criticism, and ruling that in this case the criticism was in "good faith."

Subversive Organizations. Regulation 39C provides that certain named associations, societies, groups, or organizations are declared to be illegal organizations, and acting as officers or members of such organizations becomes an offence. Over a period of eight months following June, 1940, the government, upon recommendation of the Minister of Justice, banned thirty-four organizations, representing in membership more than ninety thousand persons. At the close of the war, twenty-five organizations remained illegal, the ban having been removed from seven groups. Most prominent of those banned were Communist organizations; eighteen such groups, including the Communist party of Canada with a membership in 1940 of eighteen thousand, were listed in the regulation. Eleven of the organizations were Nazi or Fascist. The remainder consisted of Technocracy Incorporated, and Jehovah's Witnesses and three related societies.

The recommendation of the Select Committee of the House of Commons of 1942 that the Communist party, Technocracy Incorporated, and the Jehovah's Witnesses organizations be removed from the ban was not accepted by the government, though great mass meetings were held in Toronto and petitions were circulated across Canada urging the implementation of the report. During 1944 and 1945, however, the government removed nine organizations from the ban: the Ukrainian Labour Farmer Temple Association, three Finnish societies, Technocracy Incorporated, and Jehovah's Witnesses and its three related societies. Though the Communist party as such remained illegal, it has operated under the title of "Labour-Progressive," and has had some success in numerous city, provincial, and federal elections.

Upwards of two hundred persons have been prosecuted for membership in illegal organizations. In general, the sentences imposed have been lighter than in cases involving illegal statements or illegal literature.

A correlative problem has been the control of property of banned societies, principally of the Ukrainian Labour Farmer Temple Association with its one hundred and forty temples and other properties. At the time of the seizures of the temples, whole libraries were apparently destroyed. In order to solve the problem of the restoration of these properties, and to investigate the control which had been exercised by the Custodian of Enemy Property, the government, in October, 1943, established an Advisory Committee, headed by His Honour Judge George W. McPhee. The reports of this Committee to the Custodian form the basis on which the property problem is being resolved. This has been a particularly stubborn problem for the government, and progress has been slow.

Internments and Releases. Most controversial of all phases of the Defence of Canada Regulations has been Regulation 21, which assigns to the Minister of Justice the authority to order detained any person about whom he is satisfied it is necessary so to do in order to prevent that person from acting in any manner prejudicial to the public safety or the safety of the state. In contrast to practice in the United States, this British practice of preventive detention applies to all persons, citizen as well as alien. It effectively supersedes habeas corpus, and thus allows complete restriction of the freedom of the person solely upon administrative discretion. Any person detained under an order issued in pursuance of Regulation 21 has the right to an appeal before an advisory committee, an administrative tribunal consisting originally of one person, increased in 1941 to three members. Not more than three such committees have functioned at one time in hearing objections to detention.

Internment camps were established at Kananaskis in Alberta, Petawawa in Ontario, and Fredericton in New Brunswick. By 1944 only the last remained in operation. Of the more than 2,400 persons interned, it appears that nearly half were detained on orders issued under Regulation 21, the remainder being enemy aliens interned under Regulation 25. The bulk of internments occurred during 1940, with enemy aliens being added to the list as Canada successively found itself at war with additional nations. By midsummer of 1944, over 80 per cent of all persons detained under Regulation 21 had been released.

Prominent among the detentions were those of about thirty leaders of the National Unity party—a native Fascist group led by Adrian Arcand—and over one hundred and thirty leaders of the Communist party of Canada. In order to avoid detention, Tim Buck, leader of the Canadian Communists, and fifteen of his associates disappeared from public view prior to June, 1940. They reappeared after nearly two and a half years of hiding, and following their surrender to the R.C.M.P. were given their conditional release. All interned Communists were released by October of 1942. A number of these persons were prominent labour leaders, a fact which gave rise to the belief that the government was using the Defence of Canada Regulations to interfere with the rights of labour.²⁷ This allegation was repeatedly and emphatically denied by the Minister of Justice.

²⁷Of special interest in this connexion are the facts relating to the internment of Pat Sullivan, president of the Seamen's Union. See *Ex parte Sullivan*, [1941] O.W.N. 49, [1941] O.R. 417, [1941] 1 D.L.R. 676, 74 C.C.C. 70.

Of the non-Communist detentions, there were three cases of unusual interest. For publicly advising his constituents not to conform to the National Registration of 1940, Camillien Houde, Mayor of Montreal and member of the Quebec Legislative Assembly, was peremptorily interned. His release occurred August 17, 1944, his return to Montreal the next day being celebrated by some twenty thousand persons, and in December he was resoundingly re-elected Mayor.²⁸ Events relating to the detention and release of James Franceschini, a millionaire Ontario contractor, were much publicized. Interned because of apparent Fascist connexions, and released due to illness, Franceschini was the subject of public controversy over the merits of his detention and release. Two years after his release the government made public the fact that the advisory committee had originally reported that there was no evidence on which to consider Franceschini disloyal. The two detentions and releases of Alois N. Schneider, of Saskatchewan, occasioned some concern in the House of Commons. Members of the Opposition charged that his first release had political implications, as Schneider worked actively for the Liberal party in the campaign preceding the election of March, 1940, and that if an advisory committee at a hearing in 1942 recommended continued detention there was no reason to release him in 1944.

Conclusions. There is no question but that Canada has effectively guaranteed its internal security throughout the present war, and in so doing has been able to make a remarkable contribution in men and materials to the United Nations victory. No major acts of sabotage, no prominent fifth-column movements, and little public disorder (with the exception of the difficulties attending the conscription policy in late 1944) are indicative of the fact that the government has kept the situation well in hand. Much credit for this accomplishment is due the R.C.M.P., who have carried out in their world-famed manner the enormously increased duties of war-time.²⁹ The two Ministers of Justice who have held this important office during the present war³⁰ have both been men of honour and sincerity.

The record suggests, however, that perhaps the government has exceeded the justifiable bounds of controls for internal security. A list of major criticisms becomes rather lengthy—a provision in the Regulations to allow appeals by banned newspapers and periodicals was adopted too late to be of use; the banning of Technocracy Incorporated and the four Jehovah's Witnesses organizations may be questioned; the refusal of the government to implement or even to debate the recommendation of a Select Committee that the Communist party be removed from the ban is, especially in the face of public sentiment, an amazing situation in a democracy, even in war-time; there appears to have been some carelessness, and certainly a degree of tardiness, in connexion with the custodianship and restoration of property of banned organizations; no appeal whatso-

²⁸In the federal election of June, 1945, Mayor Houde was defeated in his attempt to gain a seat in Parliament.

²⁹Members of all parties and groups in the House of Commons have been unstinting in their praise of the R.C.M.P.

³⁰The Honourable Ernest Lapointe died in November, 1941, and was succeeded by the Honourable Louis S. St. Laurent.

ever was allowed any organization declared illegal; the application of preventive detention of Canadian citizens may have been unnecessarily extensive, particularly in view of the lack of a high degree of immediate danger to the nation; an insufficient number of advisory committees unduly prolonged the detentions of those who were released as soon as their cases were reviewed; sincere efforts by individuals to make constructive criticisms of government policy have resulted in prosecutions by the Crown; trivial and casual remarks extremely remote from intentional disloyalty have resulted in punishment by fine and imprisonment; and the R.C.M.P. have no doubt been overzealous in many searches and seizures of property and literature, and in laying charges for violations of the Regulations. There exists the possibility that an incalculable amount of harm has been done to numerous minority groups, whose confidence in Canadian democracy it may take years to restore. In short, one may raise some doubt as to whether the Liberal war-time government has lived up to a democratic standard of keeping war-time restrictions to a minimum consonant with military necessity and proportionate to the existing danger to the nation.

LESTER H. PHILLIPS

The University of Michigan.

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